

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 JASON J. AHN
Deputy Attorney General
4 State Bar No. 253172
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9433
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *September 6, 2018*
BY: *[Signature]* **ANALYST**

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2017-035816

14 **Wayne Stewart True, M.D.**
15 **8881 FLETCHER PKWY STE 105**
LA MESA CA 91942-3132

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. G 62330,**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).

25 2. On or about February 16, 1988, the Medical Board issued Physician's and Surgeon's
26 Certificate No. G 62330 to Wayne Stewart True, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on June 30, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

///

///

1 5. Section 2234 of the Code, states:

2 “The board shall take action against any licensee who is charged with unprofessional
3 conduct. In addition to other provisions of this article, unprofessional conduct includes, but
4 is not limited to, the following:

5 “... .

6 “(b) Gross negligence.

7 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent
8 acts or omissions. An initial negligent act or omission followed by a separate and distinct
9 departure from the applicable standard of care shall constitute repeated negligent acts.

10 “(1) An initial negligent diagnosis followed by an act or omission medically
11 appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

12 “(2) When the standard of care requires a change in the diagnosis, act, or omission
13 that constitutes the negligent act described in paragraph (1), including, but not limited to, a
14 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs
15 from the applicable standard of care, each departure constitutes a separate and distinct
16 breach of the standard of care.

17 “... .”

18 6. Section 2266 of the Code states:

19 “The failure of a physician and surgeon to maintain adequate and accurate records relating
20 to the provision of services to their patients constitutes unprofessional conduct.”

21 7. Unprofessional conduct under Business and Professions Code section 2234 is conduct
22 which breaches the rules or ethical code of the medical profession, or conduct which is
23 unbecoming a member in good standing of the medical profession, and which demonstrates an
24 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
25 575.)

26 ///

27 ///

28 ///

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. G62330 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A,¹ as more particularly alleged hereinafter:

9. Respondent was Patient A's primary care physician between 1992 until February 2012.² Patient A had a history of systemic lupus erythematosus (SLE)³, severe asthma, peripheral neuropathy⁴, chronic back pain, anxiety, depression and Post-traumatic stress disorder (PTSD).

10. Between on or about September 9, 2011 to on or about February 23, 2012, Respondent prescribed the following controlled substances to Patient A:

Filled	Drug Name	Quantity	Prescriber
09-09-11	Diazepam ⁵ 10 mg	90	Respondent
09-13-11	APAP/Hydrocodone ⁶ 325/10	240	Respondent

¹ References to "Patient A" are used to protect patient privacy.

² Conduct occurring more than seven (7) years from the filing date of this Accusation is for informational purposes only and is not alleged as a basis for disciplinary action.

³ Systemic Lupus Erythematosus (SLE) is an autoimmune disease, meaning that the immune system of the body mistakenly attacks healthy tissue.

⁴ Peripheral neuropathy refers to the conditions that result when nerves that carry messages to and from the brain and spinal cord from and to the rest of the body are damaged or diseased.

⁵ Diazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subsection (d)(9), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, Diazepam is generally used to treat anxiety disorders, alcohol withdrawal symptoms, or muscle spasms.

⁶ APAP, also known as Acetaminophen, is a less potent pain reliever that increases the effects of hydrocodone. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I), and a dangerous drug pursuant to Business and Professions Code section 4022. APAP Hydrocodone (Vicodin®, Lortab® and Norco®) is a hydrocodone combination of hydrocodone bitartrate and Acetaminophen which was formerly a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (continued...)

Filled	Drug Name	Quantity	Prescriber
09-13-11	Morphine Sulfate ⁷ 30 mg	60	Respondent
10-28-11	APAP/Hydrocodone 325/10	240	Respondent
10-29-11	Diazepam 10 mg	90	Respondent
11-9-11	Morphine Sulfate 30 mg	60	Respondent
11-14-11	Morphine Sulfate 30 mg	60	Respondent
12-15-11	APAP/Hydrocodone 325/10	240	Respondent
12-15-11	Morphine Sulfate 30 mg	60	Respondent
12-22-11	Morphine Sulfate 30 mg	60	Respondent
12-30-11	Diazepam 10 mg	90	Respondent
01-17-12	APAP/Hydrocodone 325/10	240	Respondent
01-18-12	Diazepam 10 mg	90	Respondent
01-20-12	Morphine Sulfate 30 mg	60	Respondent
02-23-12	APAP/Hydrocodone 325/10	240	Respondent
02-23-12	Morphine Sulfate 30 mg	60	Respondent

(...continued).

(e), and a dangerous drug pursuant to Business and Professions Code section 4022. On August 22, 2014, the DEA published a final rule rescheduling hydrocodone combination products (HCP's) to schedule II of the Controlled Substances Act, which became effective October 6, 2014. Schedule II controlled substances are substances that have a currently accepted medical use in the United States, but also have a high potential for abuse, and the abuse of which may lead to severe psychological or physical dependence. When properly prescribed and indicated, HCP's are used for the treatment of moderate to severe pain. In addition to the potential for psychological and physical dependence there is also the risk of acute liver failure which has resulted in a black box warning being issued by the Federal Drug Administration (FDA). The FDA black box warning provides that "[a]cetaminophen has been associated with cases of acute liver failure, at times resulting in liver transplant and death. Most of the cases of liver injury are associated with use of the acetaminophen at doses that exceed 4000 milligrams per day, and often involve more than one acetaminophen containing product."

⁷ Morphine Sulfate extended release (MS Contin®) is a strong prescription pain medication and a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(L) and a dangerous drug pursuant to Business and Professions Code section 4022.

1 11. On or about August 8, 2011, Patient A was seen in the emergency department at
2 Sharp Grossmont Hospital for "slurred speech" reported by Patient A's wife. After the
3 evaluation, it was concluded that Patient A may have had a speech alteration from a "possible
4 medication effect."

5 12. Respondent prescribed the above controlled substances without regular physician
6 reassessment of Patient A.

7 13. Respondent failed to have and/or failed to document having an established treatment
8 plan with stated goals and objectives for Patient A's long-term opiate use.

9 14. Without regular reassessment of suicide risk, Respondent augmented prescribed
10 opiates and simultaneously prescribed benzodiazepines to Patient A, a patient with anxiety and
11 major depression.

12 15. Respondent failed to conduct a periodic review of the pain treatment plan and failed
13 to conduct regular monitoring to detect possible substance abuse and/or drug diversion.

14 16. For management of Patient A's asthma, without regular clinic visits, Respondent
15 authorized injections of Depo-testosterone⁸ to Patient A on or about August 24, 2011, September
16 8, 2011, September 23, 2011, October 7, 2011, October 21, 2011, November 4, 2011, December
17 23, 2011, and January 20, 2012. Respondent utilized chronic oral corticosteroids⁹ without use of
18 inhaled corticosteroids, long-acting beta-agonists¹⁰, anticholinergic¹¹ inhalers, or a leukotriene
19 receptor antagonist.¹²

20 ///

21 _____
22 ⁸ Depo Testosterone is a drug used to support normal male development such as muscle
23 growth, facial hair, and deep voice.

24 ⁹ Corticosteroids are used to provide relief for inflamed areas of the body.

25 ¹⁰ Beta Agonists are medications that relax muscles of the airways, which widen the
26 airways and result in easier breathing.

27 ¹¹ Anticholinergics are medications that prevent the muscle bands around the airways
28 from tightening.

¹² Leukotriene receptor antagonists are among the most prescribed drugs for the
management of asthma, used both for treatment and prevention of acute asthmatic attacks.

17. Respondent committed gross negligence in his care and treatment of Patient A, which included, but was not limited to, the following:

(a) Without regular reassessment of suicide risk, Respondent augmented prescribed opiates and simultaneously prescribed benzodiazepines to Patient A, a patient with anxiety and major depression.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

18. Respondent has further subjected his Physician's and Surgeon's Certificate No. G62330 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged herein.

(a) Paragraphs 8 through 17, above, are hereby incorporated by reference and realleged as if fully set forth herein.

(b) Respondent committed repeated negligent acts which included, but were not limited to, the following:

(c) Respondent prescribed above controlled substances without regular physician reassessment of Patient A;

(d) Respondent failed to have and/or failed to document having an established treatment plan with stated goals and objectives for Patient A's long-term opiate use;

(e) Without regular reassessment of suicide risk, Respondent augmented prescribed opiates and simultaneously prescribed benzodiazepines to Patient A, a patient with anxiety and major depression;

(f) Respondent failed to conduct a periodic review of the pain treatment plan and failed to conduct regular monitoring to detect possible substance abuse and/or drug diversion; and

///

///

///

///

1 (g) For management of Patient A's asthma, Respondent utilized chronic oral
2 corticosteroids¹³ without use of inhaled corticosteroids, long-acting beta-agonists¹⁴,
3 anticholinergic¹⁵ inhalers, or a leukotriene receptor antagonist.¹⁶

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Maintain Adequate and Accurate Records)**

6 19. Respondent has further subjected his Physician's and Surgeon's Certificate No.
7 G62330 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the
8 Code, in that respondent failed to maintain adequate and accurate records regarding his care and
9 treatment of Patient A, as more particularly alleged in paragraphs 8 through 18, above, which are
10 hereby incorporated by reference and realleged as if fully set forth herein.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(General Unprofessional Conduct)**

13 20. Respondent has further subjected his Physician's and Surgeon's Certificate No.
14 G62330 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged
15 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is
16 unbecoming to a member in good standing of the medical profession, and which demonstrates an
17 unfitness to practice medicine, as more particularly alleged in paragraphs 8 through 19, above,
18 which are hereby incorporated by reference as if fully set forth herein.

19 ///

20 ///

21 ///

22 ///

23 ¹³ Corticosteroids are used to provide relief for inflamed areas of the body.

24 ¹⁴ Beta Agonists are medications that relax muscles of the airways, which widen the
25 airways and result in easier breathing.

26 ¹⁵ Anticholinergics are medications that prevent the muscle bands around the airways
27 from tightening.

28 ¹⁶ Leukotriene receptor antagonists are among the most prescribed drugs for the
management of asthma, used both for treatment and prevention of acute asthmatic attacks.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 62330, issued to Wayne Stewart True, M.D.;
2. Revoking, suspending or denying approval of Wayne Stewart True, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Wayne Stewart True, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: September 6, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant